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#### Contract Database Metadata Elements

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Union: **Binghamton Firefighters, IAFF, AFL-CIO**

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2002-2003

AGREEMENT

BETWEEN

THE CITY OF BINGHAMTON

AND

BINGHAMTON FIREFIGHTERS LOCAL 729, AFL-CIO, I.A.F.F.

**RECEIVED**

AUG 23 2005

NYS PUBLIC EMPLOYMENT  
RELATIONS BOARD

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October  
THIS AGREEMENT, entered into this 10th day of ~~August~~, 2002, by and between the CITY OF BINGHAMTON, a municipal corporation organized under and by virtue of the Laws of the State of New York, hereinafter referred to as "the City" and the BINGHAMTON FIREFIGHTERS LOCAL 729, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, hereinafter referred to as "the Association".

#### ARTICLE I - RECOGNITION

Section A. The City recognizes the Association as the sole and exclusive representative of all members of the Bureau of Fire, except for the Fire Chief, and office staff in accordance with the provisions of Permanent City Ordinance No. 200 of 1969.

The City agrees that the Association shall be the sole and exclusive representative for all bargaining and grievances.

Section B. The City shall deduct from the wages of members and remit within ten days to the Association regular membership dues for those members who sign authorizations permitting such payroll deductions. The City shall also deduct from the wages of all Firefighters covered by this Agreement, who are not members of the employee organization, an amount equivalent to the dues levied by the Association and said amount shall be transferred to the Association within ten days. The Association will establish and maintain a procedure providing for the refund to any employee demanding the return of any part of an agency shop fee deduction which represents the employee's pro rata share of expenditures by the organization in aid of activities or causes of a political or ideological nature only incidentally related to terms and conditions of employment. The Association and all bargaining unit members waive any claim against the City for deductions which in good faith are made or not honored as the case may be. All disputed amounts shall be escrowed by the City, and all disputes under this Section shall be resolved in accordance with Section 16. The only liability to the City under the Section is to restore monies improperly collected or to pay dues properly owing.

Section C. The Association affirms that it will not assert the right to strike against the City, to assist or participate in any strike, or to impose an obligation upon its members to conduct, assist or participate in such a strike.

## ARTICLE 2 - HOLIDAYS

Section A. In addition to all holidays designated as such for Firefighters by any state or national law, members of the Bureau of Fire shall also receive the benefit of all other holidays designated or observed as such by the City. Eight (8) hours for each holiday not worked shall be paid to each member of the Bureau of Fire.

1. All holidays enumerated below shall be paid to all fire personnel covered by this Agreement:

	<u>2002</u>	<u>2003</u>
New Year's Day	1-1-02	1-1-03
Martin Luther King Day	1-21-02	1-20-03
Lincoln's Birthday	2-12-02	2-12-03
Washington's Birthday	2-22-02	2-22-03
Memorial Day (observed)	5-27-02	5-26-03
Independence Day	7-4-02	7-4-03
Labor Day	9-2-02	9-1-03
Columbus Day (observed)	10-14-02	10-13-03
Election Day	11-5-02	11-4-03
Veteran's Day	11-11-02	11-11-03
Thanksgiving Day	11-28-02	11-27-03
Christmas Day	12-25-02	12-25-03

If the above dates conflict with State or Federal laws, there will be no duplicate payments made for said holidays.

2. Payment for Firefighters who work on holidays: In addition to their regular day's pay and/or overtime pay, those who work on holiday shall be paid at the rate of time and one-half for hours actually worked.

3. All holiday pay shall accumulate and be paid the first pay period in December or by December 15. This is true for all holidays except Christmas, the pay for which shall be paid the first pay date in January.

4. This Section does not cover holidays that are designated and observed by other bargaining units as a result of contract negotiations.

5. The staff officers and the Fire Lieutenant and Fire Captain regularly assigned to Fire Prevention agree to work six of the enumerated holidays. The selection of holidays is at the option of the employee based upon seniority and as available, at the discretion of the Chief and will be made at the time of vacation selection. Holidays occurring while the firefighter is on vacation count as holidays worked under this subsection.

6. The staff officers and fire lieutenants and captain regularly assigned to fire prevention will observe the aforesaid holidays on the date said holidays are observed by City Hall. In the event that City Hall does not observe the aforesaid holidays, said holidays will be observed by the fire prevention staff officers, fire lieutenants and captains on the same dates as the other Firefighters.

### **ARTICLE 3 - WORK WEEK AND WORKING CONDITIONS**

#### **Section A. Work Week and Pay Schedules**

The City will continue to recognize that the average work week is 40 hours, in accordance with New York State Law. The City will continue with biweekly pay schedules until December 31, 1999. Effective January 1, 2000, salary payments will be on a semi-monthly basis.

#### **Section B. Work Schedules**

Changes in the written work schedule shall be arrived at by mutual agreement between the Chief and the Association, subject to the approval of the Commissioner of Public Safety. The work schedule for the staff officers and the Fire Lieutenant and Fire Captain regularly assigned to Fire Prevention shall be 7:30 a.m. to 5:30 p.m., four days per week.

#### **Section C. Overtime**

1. All members of the Fire Bureau who are kept on duty because of a conflagration, major emergency, or to maintain manpower standards shall be paid at one and one-half time the regular hourly rate for time actually worked.

2. All authorized overtime duty in excess of scheduled weekly hours per week required of members of the Bureau of Fire

shall be compensated at the rate of one and one-half times the hourly rate of pay. This shall be paid on the pay date following the overtime. The overtime pay for Firefighters held over at the end of their shift will be computed based upon actual time worked up to 15 minutes. Firefighters held over at the end of their shift more than 15 minutes shall be paid for 1 hour of overtime. Firefighters held over at the end of their shift for more than 1 hour shall be paid overtime based on all the actual time worked in 6 minute increments.

3. A firefighter who is required to report to Court or report for other duty at the direction of the Fire Chief during off-duty hours, shall be compensated at the rate of one and one-half times the firefighter's hourly rate of pay with a minimum payment of three hours.

#### Section D. Working Rules

1. Nothing herein shall be deemed to prohibit the adoption of rules by the Bureau for the operation of the Bureau, providing such rules do not conflict with any of the provisions of this Agreement, and there shall have been prior consultation before adoption of the rules with officers of Local 729.

2. The Labor-Management Committee otherwise provided for in this contract shall be empowered to undertake consultation on either work schedules or vacation schedules at the request of either party.

3. Any agreed vacation and/or work schedule shall be presented to fire personnel no later than December 15. Any new vacation and/or work schedules shall be effective January 1.

4. Results of any written or oral examinations or tests will be held in strict confidence between the individual member and any person of supervisory capacity. The Confidentiality of this Section is not intended to include legal or grievance proceedings where the results of examinations or tests are reasonably necessary for the prosecution or defense.

5. Any reprimand shall be given in a manner that will not embarrass the Firefighter before other Firefighters or the public.

#### Section E. Fire Bureau Regulations

1. All rules and regulations of the Binghamton Fire Bureau not covered by this Agreement shall be covered in general or special orders and by the published Binghamton Fire Bureau Rule Book. A new revised rule book shall be published at least once every five years. The Association shall be consulted in any revision of the Rule Book.

2. All general and special orders shall be in writing signed by duly authorized officers of the Bureau.

3. All administrative verbal orders of a continuous nature shall be followed by a written order within ninety-six (96) hours to remain effective, with proper authorized signatures, and shall be placed on station bulletin boards for a period not less than thirty(30)days.

#### ARTICLE 4 - VACATIONS

Section A. Firefighters shall be granted vacation in each calendar year as follows: one (1) week after one (1) year; two (2) weeks after two (2) years; three(3) weeks after three years; four (4) weeks after four years. Vacations may be taken in four (4) consecutive weeks or, at the option of the member, other than staff officers covered by Sec. D below, as split vacation periods each consisting of two (2) weeks. Firefighters with twenty (20) years or more of service shall be granted an additional three (3) shifts of vacation. Said additional vacation shifts may or may not be consecutive. Said additional vacation time for Line Personnel shall be arranged between the individual and his Duty Chief after all others have selected their vacations. Said additional time will be selected on a seniority basis and on an as-available basis at the Chief's discretion.(The same maximum number of personnel on vacation at a time as is presently the practice will continue.)

Section B. The City shall provide payment for unused, and/or accumulated holiday, vacation (vacation credit shall not accumulate from year-to-year), and overtime or recall time upon the separation or retirement of a member in good standing.

Section C. Line Officers and Firefighters shall pick vacations within the group to which they are assigned, with



officers picking first by seniority and Firefighters picking second by seniority. No more than two (2) Assistant Chiefs will take vacation at the same time, unless permission is granted by the Chief of the Department.

Section D. Staff Officers and the Fire Lieutenant and Fire Captain regularly assigned to Fire Prevention shall choose vacations separate from Line Officers and Firefighters. Vacations shall be based upon seniority and as available, at the discretion of the Chief of the Department.

#### **ARTICLE 5 - SICK LEAVE**

Section A. Sick leave for non-duty connected injury or illness shall be computed at the rate of one (1) day per month and may be accumulated. All employees appointed to the Fire Bureau from other City departments shall be entitled to the transfer of two-thirds of all accumulated non-Fire Bureau City-earned sick days upon appointment to the Fire Bureau. Sick leave for new members shall start accumulating at the date of entry in the Department. Sick leave shall be deducted at the rate of one (1) day for each ten (10) or fourteen (14) hours scheduled work period missed because of the above injury or illness.

Section B. Any Firefighter who has been absent ten (10) different times (for any length of time per absence) over a twelve-month period may be required to visit a physician each and every time that he is absent due to illness thereafter, within the twelve-month period in which he has ten (10) different absences, and to provide at their own expense, a written statement from the physician to his supervisor, upon returning to work. For example, each illness absence of consecutive days, or one (1) day shall be considered one (1) illness absence. Employees who do not provide such slips will not be permitted to return to work until they provide such slips and such an absence shall be considered unauthorized leave. In addition, anyone who is absent for four (4) or more consecutive work days shall be required to consult a physician upon returning the work. The Fire Chief retains the right to exercise his prerogatives as provided for in the City of Binghamton's Code, Section 2-184, in cases of abuse.

Section C. Maximum accumulated sick time for pay out purposes, upon retirement or leaving the City's service in good

standing, is set at one hundred forty five (145) days with maximum pay out set at seventy two and one-half (72.5) days, until January 1, 2003. Effective January 1, 2003, maximum accumulated sick time for pay out purposes, upon retirement or leaving the City's service in good standing, will be set at one hundred and fifty (150) days with maximum pay out set at seventy five (75) days. For example, an eligible employee with 100 accumulated days would receive a payment of 50 days pursuant to this paragraph. Such payment will be made within thirty (30) days of retirement or leaving service. Payment shall be at the hourly rate set forth in this agreement.

#### **ARTICLE 6 - DEATH BENEFITS**

Section A. Unused compensatory time, overtime, holiday, and vacation pay shall be paid over to the department member's surviving spouse or, if there be none, to the beneficiary or estate, within 30 days of the termination of employment because of death. Payment shall be at the hourly rate set forth in this Agreement.

Section B. The City agrees to continue the provisions of General Municipal Law Section 208-b to provide death benefits for beneficiaries of firefighters of the City of Binghamton if the Mayor shall determine, on the basis of the evidence, that such firefighter met the statutory criteria.

Section C. The City shall pay to the firefighter's surviving spouse or, if there be none, to the beneficiary or estate of a firefighter with fifteen or more years of service, one-half of his unused accumulated sick time up to a maximum of one hundred seventy five (175) accumulated days with a maximum pay out of eighty seven and one-half (87.5) days. For example, an eligible employee with 100 accumulated days would receive a payment of 50 days pursuant to this paragraph. Such payment shall be made within thirty (30) days of termination of employment because of death. Payment shall be at the hourly rate set forth in this Agreement.

#### **ARTICLE 7 - PERSONAL LEAVE**

One ten (10) hour and one (1) fourteen (14) hour personal leave day per year shall be granted to all members of the Bureau of Fire, except staff officers and the Fire Lieutenant and Fire

Captain regularly assigned to Fire Prevention, who shall receive three (3) personal leave days. Requests for such leave shall be made twenty-four (24) hours in advance, except in cases of a member's emergency. Leave must be approved by the Duty Chief, whose approval shall not be unreasonably withheld. Personal leave days shall not be cumulative.

Chiefs, Acting Chiefs, Assistant Chiefs, and Acting Assistant Chiefs shall grant a member a minimum of two (2) hours off duty in emergency cases of sickness, accident, or other emergency occurring in the member's immediate family which shall consist of the firefighter's spouse, son, daughter, mother, father, sister or brother, grandparents and grandchildren, mother-in-law, father-in-law, stepson and step daughter. Said emergency time off shall be at the discretion of the Chief, or designee. Members may also be granted two (2) hours off duty for the visiting of the sick member of his immediate family as described above.

Time off shall be granted a member in case of death in his immediate family, as described above; and four (4) hours off duty shall be granted to attend the funeral of his relatives not herein provided.

In case of extreme emergency, additional time off duty shall be granted, despite the fact that the circumstance of such case may not be herein described.

Members shall be continually mindful of the fact that the provisions and benefits to them as outlined above are not to be abused. All cases shall be at the discretion of the Chief or his designee.

The first two requests for personal leave shall be granted subject to the discretion of the Duty Chief.

#### **ARTICLE 8 - INSURANCE**

The City will provide the Blue Cross/Blue Shield of Central New York Option 4 Plan; Dental Program Basic Coverage Schedule of Allowances Schedule A; the Supplemental Basic Benefits Rider Schedule of Allowances Schedule A; the Periodontics Benefits Rider Schedule A; the Orthodontic Benefits Rider Schedule A; and

the Blue Cross/Blue Shield Vision Expense Schedule of Allowances Schedule A.

The City shall continue to pay 90% of the cost of all premiums of the aforesaid health insurance plan in 2002, 2003. The employee shall continue to pay 10% of the annual premium in equal semi-monthly installments for the years 2002, 2003. These premiums shall be automatically subject to the City Flex Benefit unless the individual requests to opt out of the Flex Plan in writing. Said opt out waiver must be exercised in the month of December for the following year.

Effective January 1, 2003, the aforesaid plan shall be modified to increase the annual deductibles from the current \$50/\$150 to \$100/\$300 and the annual stop-loss maximum under the major medical component shall be increased from the current \$2,000 to \$3,000.

The City agrees to continue to pay 90% of the cost of the Blue Cross/Blue Shield Option 4 Plan. Individual firefighters participating in the BC/BS Blue Point Plan shall contribute the difference between the cost of the BC/BS Blue Point Plan and the City's contribution of 90% of the Blue Cross/Blue Shield Option 4 Plan.

If any firefighter has prescription expenses for himself and/or his family after the insurance allowance provided for in the aforesaid plan in excess of \$40.00 per month, said expense will be reimbursed from the City Insurance Fund through December 31, 2002, when it will cease effective January 1, 2003.

Enrollment in the BC/BS Blue Point Plan shall be limited to thirty five members on a first come first served basis.

The City may change to another health insurance carrier other than the above plan, providing the same benefits only by mutual consent of the parties.

#### **ARTICLE 9 - UNIFORM ALLOWANCE**

Section A. The City shall pay \$900.00 per unit member and \$1,175 for new hires in their first year. New hires employed between January 1<sup>st</sup> and June 30<sup>th</sup> will receive \$1,175. For new hires employed after June 30<sup>th</sup> the allowance will be pro-rated. Such allowances shall be paid for all firefighters, except those permanently classified as 207(a). Said allowance shall be pro-rated during the year for each month of service and will be paid

not later than March 1, unless extended by mutual agreement, for thirty (30) days.

All members will provide themselves with approved fire retardant station wear as specified under N.F.P.A. 1975. The City shall be responsible for replacing items of "turnout gear" which are damaged in the direct line of duty. The City and the Union shall jointly form a Review Committee to handle any disputed claims regarding the administration of this provision. The Review Committee shall include the Chief of the Bureau or his designee, a union designee and the City's Director of Purchasing.

Section B. There shall not be any change in the type of uniforms or work clothes presently used during the term of this contract except by mutual agreement of the Labor-Management Committee.

#### **ARTICLE 10 - RETIREMENT**

Section A. For all members of the Bureau of Fire, the City will continue the retirement plans in effect. Those members of the Bureau of Fire hired on or after July 1, 1973, shall be governed by the plan outlined below as modified by the requirements of the applicable State Statutes now in effect. The City will make no attempt to exclude or block application of Section 375-i to 207-a firefighters. The Plans consist of:

1. One year averaging of final salary in accordance with Article 8, Section 302(9)(d) of the New York State Retirement and Social Security Law.

2. Twenty-five year one-half pay retirement.

3. Twenty-five year one-half pay retirement with 1/60th added for each additional year of service.

4. Twenty year one-half pay retirement.

5. The provisions of New York Retirement and Social Security Law, Section 375-i (the improved career plan).

Section B. Effective January 1, 2000 at the Firefighters option, with 60 days written notice to the City, the City will by appropriate action, adopt the additional retirement option, once

adopted by the New York State Legislature which provides for calculation of Final Average Salary (FAS) for Tier II Firefighters in the same manner that FAS is calculated for Tier I Firefighters. The proportionate one-year past service cost and any rate increase in that year caused solely by the adoption of this new option in year 2000, shall be subtracted from the second year raise (4%). This assumes a 10 year amortization schedule. For example: If the Tier II FAS is adopted for the year 2000 of the contract and the past service cost is \$950,000, that past service cost will be amortized over ten years so that the year 2000 cost would be \$95,000. That amount would be subtracted from the negotiated 4% raise for that year. Additionally, if the adoption of the aforesaid Tier II FAS benefit results in a rate increase solely as a result of the adoption, that increase would also be subtracted from the negotiated 4% raise for year 2000, unless the increase does not occur until the year 2001. In that case, the adjustment will be made in the year 2001. If the adoption of the aforesaid plan results in a decrease in the cost of the retirement plan for the City of Binghamton, said decrease would be added to the 4% raise in the year 2000 or the year 2001, depending on which year the decrease occurs. If Tier II FAS is adopted for the year 2000 and the one year past service cost is subtracted in the year 2000 from the 4% raise, there would be no adjustment in the year 2001 negotiated 4% increase for amortized service credit. If the Tier II FAS plan was adopted in the year 2001, the negotiated wage increase for year 2001 would be adjusted to reflect one year of the 10 year amortization past service cost and any rate increase caused solely by the adoption of the new FAS option.

#### **ARTICLE 11 - OUT-OF-TITLE WORK**

Section A. If any Firefighter is assigned to fill a temporary vacancy caused by another Firefighter's vacation, sickness, leave of absence or for any other reason which requires such Firefighter to perform work in a higher paying classification, he shall be compensated at the next higher rate of pay of the higher classification after working in such higher classification more than twenty (20) days. If such work must be performed in a lower classification, in no case shall the Firefighter be compensated less than his regular established rate of pay. Twenty (20) days means twenty (20) working days.

Section B. If any employee covered by this Agreement who is working and being paid out-of-title pay, becomes sick and has accumulated sick leave, he will receive up to three sick leave days at the out-of-title pay rate. If said employee continues on sick leave beyond three working days, his sick leave pay will be calculated at the old rate. Upon return of said employee from sick leave to the out-of-title position, he will be immediately returned to his out-of-title pay rate.

Section C. If a member works out-of-title for less than a complete work shift, the member will be credited as follows:

1. A minimum of one-half (1/2) shift out-of-title credit if actual time worked out-of-title is less than one-half of a work shift but more than one hour.

2. A complete shift of out-of-title credit, if actual time worked out-of-title is more than one-half of a work shift.

Section D. All fire apparatus will have an officer or acting officer in charge at all times.

#### **ARTICLE 12 - HOURLY RATE OF PAY**

The hourly rate of pay shall be calculated on the basis of the regular work week, as set forth in Article 3, Section A. WORK WEEK, of this Agreement for overtime purposes (40 hours times 52 weeks = 2,080 hours in a work year).

#### **ARTICLE 13 - BULLETIN BOARD**

The Association shall have the right to post notices and communications on the bulletin boards situated in an appropriate place at the Fire Bureau, subject to the approval of the Fire Chief as to the contents thereof.

#### **ARTICLE 14 - RELEASE TIME FOR ASSOCIATION BUSINESS**

Section A. The City will give release time with pay to Officers and Delegates designated by the Association for Association business, but this shall be limited to a maximum of two (2) firefighters at any one time; except that for conventions of the International Association of Firefighters which is biannual, and the New York State Firefighters, which is annual,

the maximum shall be three (3) firefighters at any time. The Fire Chief will be notified at least five (5) days prior to such release time requested.

Section B. The City will give release time with pay, not to exceed three (3) representatives at any one time, to those members designated by the Association, to participate as a negotiating committee and/or fire labor management committee to conduct Association business pursuant to the Agreement.

#### **ARTICLE 15 - GRIEVANCES**

Grievances within the Department shall be handled in accordance with the procedures established pursuant to Resolution No. 21 1963, duly adopted by the Binghamton City Council September 23, 1963.

#### **ARTICLE 16 - CONTRACT ADMINISTRATION**

In the event of a dispute between the parties to this Agreement involving the interpretation or application of any provisions of this Agreement, either party shall have the right to resolve the dispute in the follow manner:

Section A. The dispute shall be presented within ten (10) calendar days of its occurrence and discussed by the Deputy Commissioner of Public Safety and representatives of the Association. The Section aggrieved shall be spelled out in writing. If these discussions fail to produce a satisfactory agreement within five (5) calendar days, a written record of the dispute shall be made by each party to this Agreement. Such written record shall be forwarded within five (5) calendar days to the Mayor and the President of the Association.

Section B. The Mayor or the Mayor's representative shall discuss the dispute with the representatives of the Association within seven (7) days of receipt of the written record.

Section C.1. If the dispute is not settled within fourteen (14) calendar days, either party may take the dispute to arbitration upon the service of written notice to the other party of intention to do so; said notice shall be served within ten (10) calendar days; otherwise the right of arbitration of such dispute shall be deemed waived.



Section C.2. Within five (5) work days after such written notice of submission to arbitration, the City and the Association will agree upon a mutually acceptable arbitrator, competent in the area of the grievance, and will obtain a commitment from said arbitrator to serve. If the parties are unable to agree upon an arbitrator or to obtain such a commitment within the specified time period, a request for a list of arbitrators will be made to the American Arbitration Association by either party. The parties will then be bound by the rules and procedures of the American Arbitration Association for the selection of an arbitrator.

Section C.3. The selected arbitrator will hear the matter promptly and will issue a decision no later than fourteen (14) calendar days from the date of the close of the hearing, or, if oral hearings have been waived, then from the date the final statements and proofs are submitted to the arbitrator. The arbitrator's decision will be in writing and will set forth findings of fact, reasoning and conclusion on the issues.

Section C.4. The arbitrator shall have no power or authority to make any decision which requires the commission of an act prohibited by law or which is in violation of the terms of this Agreement.

Section C.5. The decision of the arbitrator shall be final and binding upon all parties.

Section C.6. The cost for the services of the arbitrator, including expenses, if any, will be borne equally by the City and the Association.

Section D. Nothing contained herein shall be deemed to alter in any way the grievance procedure adopted by the City pursuant to the provision of the General Municipal Law, with regard to grievances of individual members.

#### **ARTICLE 17 - FIRE LABOR - MANAGEMENT COMMITTEE**

A Fire Labor-Management Committee shall be established for the purpose of discussing at mutually agreeable times, matters of mutual concern, including but not limited to questions regarding continuing education and training, productivity and physical fitness, but not to include amendment of this Agreement. This

Committee shall be limited to three (3) labor and three (3) management members and shall meet at the request of either party upon reasonable notice to the other party, but not more often than once every month, unless otherwise mutually agreed upon. Any expenses pursuant to said meetings shall be equally borne by the parties to this Agreement.

#### **ARTICLE 17B - LABOR/MANAGEMENT SAFETY AND HEALTH COMMITTEE**

A labor/management safety and health committee shall be established for the purpose of discussing at mutually agreeable times, matters of mutual concern relating directly or indirectly to the safety and health of the members of the Binghamton Fire Department. This committee shall be limited to three (3) labor and three(3) management members who shall meet at the request of either party upon reasonable notice to the other party, unless otherwise mutually agreed upon. Any expenses pursuant to said meetings shall be equally borne by the parties to this Agreement.

#### **ARTICLE 18 - EXECUTION**

No amendment of alteration of this Agreement shall be binding, unless it is in writing and signed by the Mayor as authorized by City Council and by two (2) duly authorized representatives of the Association.

#### **ARTICLE 19 - SAVING CLAUSE**

This Agreement and all provisions herein are subject to all applicable laws, and in the event any provision of this Agreement is held to violate such laws, said provision shall not bind either of the parties, but the remainder of this Agreement shall remain in full force and effect, as if the invalid or illegal provision had not been a part of this Agreement.

#### **ARTICLE 20 - LEGISLATIVE ACTION TAYLOR LAW - 204(A)1**

It is agreed by and between the parties that any provision of this Agreement requiring legislative action to permit its implementation by amendment of law or by providing the additional funds therefore, shall not become effective until the appropriate legislative body has given approval.

## ARTICLE 21 - TERM OF CONTRACT

This contract shall be effective January 1, 2002, and the expiration date will be December 31, 2003.

## ARTICLE 22 - RETROACTIVE CLAUSE

The parties agree that the provisions of this Agreement, unless otherwise expressly stated herein, will be retroactive to January 1, 2002.

## ARTICLE 23 - SALARY

Section A. The base salary for all positions covered by this Agreement shall be derived from the base salary of a Firefighter 1st Grade (more than 36 months)..

	<u>2002</u>	<u>2003</u>
	3%	3%
1st Assistant Chief	\$60,610	\$62,429
Fire Marshall	\$60,610	\$62,429
2nd Assistant Chief	\$58,365	\$60,116
Fire Training Inst.	\$58,365	\$60,116
Fire Captain	\$51,631	\$53,180
Fire Lieutenant	\$49,386	\$50,867
Firefighter, 1st	\$44,898	\$46,245
(more than 36 mths)		
Firefighter, 2nd	\$41,753	\$43,006
(24-36 months)		
Firefighter, 3rd	\$38,162	\$39,307
Firefighter,	\$33,672	\$34,682
Probationary -		
(less than 12 months)		

Section B. Upgrading of Firefighters is to take effect on their anniversary dates.

Longevity:

8 years	\$550
15 years	\$550
20 years	\$450

Section C. In 2002 and continuing, employees covered by this Agreement, including 207-a Firefighters, shall have their base salary increased for longevity purposes by Five Hundred Fifty Dollars (\$550.00) after they have served eight or more continuous years in the Binghamton Bureau of Fire, an additional Five Hundred Fifty Dollars (\$550.00) after they have served fifteen (15) or more continuous years and an additional Four Hundred Fifty Dollars (\$450.00) after they have served twenty (20) or more continuous years in the Binghamton Bureau of Fire.

Section D. Firefighters shall be compensated an additional two dollars (\$2.00) per hour when assigned to fire ambulance duty. Firefighters assigned to ambulance duty will be limited to two members per shift. This Section shall not apply to ALS personnel who are compensated pursuant to Section F below.

Section E. Firefighters who voluntarily serve the Bureau of Fire as Emergency Medical Technician Instructors shall be compensated at an additional twenty-seven dollars and eight cents (\$27.08) per pay period (semi-monthly).

Instructors shall be limited to two members per work group for a total of eight instructors.

Section F. Upon satisfactory completion of the New York State Health Department Paramedics course and receipt of certification, a Firefighter participating in the ALS Program shall receive an adjustment equal to 5% of their base salary. This 5% adjustment shall be added to base salary for all purposes including overtime compensation, social security and retirement and paid in semi-monthly installments.

#### **ARTICLE 24. OSHA MANDATED EXAMS**

Firefighters shall be entitled to applicable OSHA-mandated exams and physicals (i.e. respirator fitness exams and hazmat physicals) and the cost of such exams and physicals shall be borne by the City. Such exams shall be completed by July 1<sup>st</sup> each year.

#### **ARTICLE 25 - MISCELLANEOUS**

It is mutually agreed that for purposes of this Agreement, the term Firefighter(s) shall include all members of the Bureau

of Fire where applicable. The terms Firefighter(s) and All members of the Bureau of Fire shall not include the Fire Chief, Superintendent of Maintenance or clerical office staff.

#### **ARTICLE 26 - EDUCATIONAL BENEFITS**

If the Employer gives prior written approval, then a Firefighter will be reimbursed for courses taken on the employee's own time. A written request for approval shall be made by the Firefighter to the Chief prior to course registration. The Chief shall forward said request to the Mayor with his recommendation, if any. Tuition payments by the employer will not be made in excess of Two Thousand Dollars (\$2,000.00) per year. Effective January 1, 2003, the total annual expenditure made by the City shall be increased from the current \$2,000.00 to \$5,000.00 and courses eligible for reimbursement under this Article shall be limited only to courses necessary for the firefighter to fulfil the necessary course work for an Associates' Degree in Fire Science or the Paramedic Program.

All members who currently hold a two-year (Associate) degree in Fire Science or the Paramedic Program from a State accredited institution shall have their annual salary increased by Three Hundred Dollars (\$300.00). Any members who obtain such degree shall receive the aforesaid increase.

Upon satisfactory completion of the New York State Health Department Paramedic course and receipt of certification, the Firefighter will receive a one time stipend in lieu of overtime of \$4,000.00.

#### **ARTICLE 27 - NOTIFICATION OF INJURY OF SICKNESS FOR GENERAL MUNICIPAL LAW SECTION 207-A CLAIMS.**

Notification of injuries or sickness for claims under General Municipal Law Section 207-a shall be considered satisfactory if notification is given consistent with notification of accident and claims under the New York State Workers' Compensation Law.

#### **ARTICLE 28 - RETIREMENT INCENTIVE**

All members who retire within one year after initially becoming eligible for retirement will receive a payment of Two

Thousand Dollars (\$2,000.00). Any firefighter granted either an accidental disability retirement or performance of duty disability retirement pursuant to Section 363-a and/or Section 363-c of the Retirement and Social Security Law shall be entitled to the payment of \$100 for each year in service or fraction thereof up to the maximum payment of \$2,000.

**ARTICLE 29 - HEALTH INSURANCE BONUS**

Members who elect not to receive, or who are not receiving the health insurance program provided through this contract shall be entitled to a semi-monthly payment of One Hundred Eight Dollars and Thirty Three Cents (\$108.33). If said members are eligible for individual coverage, the aforesaid payment to be made on a semi-monthly basis will be pro-rated. In order to be eligible for this payment, the member shall provide satisfactory proof to the City of alternative health insurance coverage.

In the event that such member ceases to be eligible for continued coverage under his or her alternative health insurance, or the member requests to rejoin the plan provided by this contract, the semi-monthly payment shall cease. However, the City shall pay such employee an amount not to exceed the semi-monthly cost of the plan, provided by this contract directly to the employee for the purpose of continuing said member's alternative health insurance under a conversion contract until said employee rejoins the plan provided under this contract.

**ARTICLE 30 - DRUG AND ALCOHOL POLICY**

The Drug and Alcohol Policy annexed as Exhibit "A" to the contract is applicable to all members of this bargaining unit as well as the Chief of the Bureau.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their representatives.

Date: 10/10/02

CITY OF BINGHAMTON

By: Richard A. Bucci  
Richard A. Bucci, Mayor

\_\_\_\_\_  
Attested

BINGHAMTON FIREFIGHTERS  
LOCAL 729, INTERNATIONAL  
ASSOCIATION OF FIREFIGHTERS

By: Michael T. McManus  
Michael T. McManus, President

By: Patrick J. Eggleston  
Patrick J. Eggleston, Secretary

By: Samuel Santoni  
Samuel Santoni, Treasurer

By: Jerry Marinich  
Jerry Marinich,  
Insurance Chairman

Approved as to form

Gregory J. Poland  
Gregory J. Poland  
Corporation Counsel

STATE OF NEW YORK :  
COUNTY OF BROOME : ss:  
CITY OF BINGHAMTON:

October

On this 10th day of August, 2002, before me the undersigned personally appeared RICHARD A. BUCCI, who being by me duly sworn, deposes and says: That he is the Mayor of the City of Binghamton, the municipal corporation named in and which executed the above instrument; that he knows the seal of said City; and that the seal affixed to this instrument is such corporate seal and that it was so affixed by order of the Council of said City; and that he signed his name thereto by like order.

Lesley A. Cornwall  
Notary Public

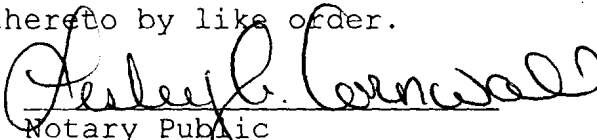
22

LESLEY A. CORNWALL  
Notary Public, State of New York  
No. 01005013118  
Qualified in Broome County  
Commission Expires 7/15/03

STATE OF NEW YORK:  
COUNTY OF BROOME : ss:  
CITY OF BINGHAMTON :

October

On this 10th day of ~~August~~, 2002, before me personally came Michael T. McManus, to me personally known who, being by me duly sworn did depose and say that he resides in Binghamton, New York; that he is the President of the Binghamton Firefighters Local 729, the corporation described in and which executed the above Instrument, that he knows the seal of said corporation; that the seal affixed to said Instrument is such corporate seal; and that he signed his name thereto by like order.

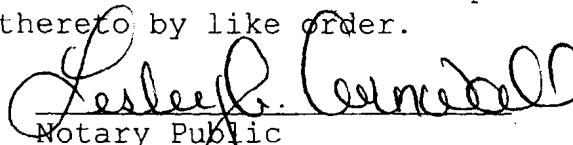
  
Notary Public

LESLEY A. CORNWALL  
Notary Public, State of New York  
No. 01005013118  
Qualified in Broome County  
Commission Expires 7/15/03

STATE OF NEW YORK:  
COUNTY OF BROOME : ss:  
CITY OF BINGHAMTON :

October

On this 10th day of ~~August~~, 2002, before me personally came Patrick J. Eggleston, to me personally known who, being by me duly sworn did depose and say that he resides in Binghamton, New York; that he is the Secretary of the Binghamton Firefighters Local 729, the corporation described in and which executed the above Instrument, that he knows the seal of said corporation; that the seal affixed to said Instrument is such corporate seal; and that he signed his name thereto by like order.

  
Notary Public

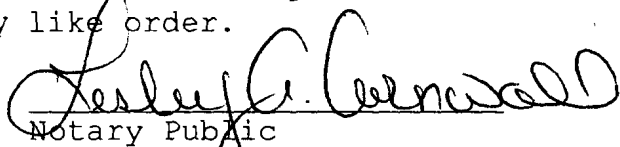
LESLEY A. CORNWALL  
Notary Public, State of New York  
No. 01005013118  
Qualified in Broome County  
Commission Expires 7/15/03



STATE OF NEW YORK:  
COUNTY OF BROOME : ss:  
CITY OF BINGHAMTON :

October

On this 10th day of ~~August~~, 2002, before me personally came Samuel Santoni, to me personally known who, being by me duly sworn did depose and say that he resides in Binghamton, New York; that he is the Treasurer of the Binghamton Firefighters Local 729, the corporation described in and which executed the above Instrument, that he knows the seal of said corporation; that the seal affixed to said Instrument is such corporate seal; and that he signed his name thereto by like order.

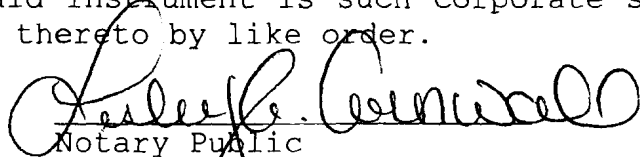
  
Notary Public

LESLEY A. CORNWALL  
Notary Public, State of New York  
No. 01005013118  
Qualified in Broome County  
Commission Expires 7/15/03

STATE OF NEW YORK:  
COUNTY OF BROOME : ss:  
CITY OF BINGHAMTON :

October

On this 10th day of ~~August~~, 2002, before me personally came Jerry Marinich, to me personally known who, being by me duly sworn did depose and say that he resides in Binghamton, New York; that he is the Insurance Chairman of the Binghamton Firefighters Local 729, the corporation described in and which executed the above Instrument, that he knows the seal of said corporation; that the seal affixed to said Instrument is such corporate seal; and that he signed his name thereto by like order.

  
Notary Public

LESLEY A. CORNWALL  
Notary Public, State of New York  
No. 01005013118  
Qualified in Broome County  
Commission Expires 7/15/03

## EXHIBIT "A"

### DRUG AND ALCOHOL TESTING POLICY

#### Purpose

1.1 The purpose of this policy is to establish the City of Binghamton's policy regarding rules governing drug and alcohol testing for firefighters in the Binghamton Fire Bureau. As an employer, the City of Binghamton maintains a strong commitment to provide a safe, efficient work environment for its firefighters and the public they serve. This policy is based upon the City's policy and practice of prohibiting the use of alcohol and drugs on the job, or prior to reporting to work.

#### Program Requirements

##### 2.1 Participation as a Condition of Employment.

All current Binghamton Fire Bureau firefighters and firefighter applicants must participate in the drug and alcohol-testing program described herein. Failure to participate in, and comply with, any and all program requirements may result in disciplinary action by the City up to, and including, termination of employment.

##### 2.2 Prohibited Behavior.

It is the policy of the City of Binghamton's Fire Bureau that:

- a.) no firefighter shall use, sell, distribute, dispense, possess, or manufacture any alcoholic beverages, illegal drugs or any other intoxicating or controlled substance on a job site or on City property while on duty or while in a City vehicle;
- b.) no firefighter shall report to work unfit for duty at the beginning of a shift or upon returning from any break, lunch, or rest period as a result of consuming alcohol, illegal drugs, or any other intoxicant or controlled substance;
- c.) in some cases, the use of prescription or over-the-counter drugs may cause impairment that prohibits the firefighter from performing firefighter duties. It is the sole responsibility of the firefighter taking any prescription or over-the-counter medication(s) that may impair performance to consult with his/her physician or pharmacist regarding its effects and to inform his/her supervisor if he/she may be impaired. A

firefighter may be required to have his/her physician certify that a given medication does/does not adversely affect the firefighter's fitness for duty;

- d.) violation of any of these rules by a City firefighter may result in disciplinary action up to, and including, termination of employment;

### 2.3 Circumstances for Testing.

This policy requires that drug and alcohol tests be given to City firefighters in the following circumstances:

- a.) Pre-employment Testing. Applicants for employment in the class of firefighter and any officer position not filled internally must be given a pre-employment drug test. Firefighter applicants may not be hired or assigned to duty unless they complete and pass the test. Prior to conducting the drug test, the City will inform the applicant of the testing requirements. Vacancy announcements and job postings must stipulate that passing a drug test is a condition of employment. Finally, applicants may be required to sign a document acknowledging that they know they are subject to testing.
- b.) Reasonable Suspicion Testing. Reasonable suspicion that a firefighter may be abusing drugs or alcohol exists when objective facts and observations are brought to the attention of a superior officer and, based upon the reliability and weight of such information, as well as the officer's own observations he can reasonably infer or suspect that a firefighter may be under the influence of alcohol or drugs. Reasonable suspicion must be supported by the purchase, sale or possession of alcohol or drugs; associations with known drug dealers or users; observation of the firefighter with known drug or drug-related locations; unexplained change in the firefighter's behavior or work performance; an observed impairment of the firefighter's ability to perform his duties; other objective criteria such as the odor of alcohol, slurred speech, staggering or impaired gait or other behavioral indicators as taught to supervision by a substance abuse professional from the City's EAP vendor.
- c.) Post-Accident Testing. In all cases of any on-duty City firefighter being in an accident involving the loss of human life or if a City firefighter is the driver of any vehicle involved in an accident during on-duty time and receives a citation under State or local law for a moving traffic

violation arising from the accident, a post-accident drug and alcohol test will be administered to the City firefighter(s) driving the vehicle or operating equipment. In addition, it is the City's policy to require post-accident testing where significant property damage occurs as the result of an accident or where the firefighter's record of accidents would give cause for concern. Drug and alcohol testing must be performed immediately following the accident. If an alcohol test is not administered within two (2) hours following the accident, then the command officer on the scene must still attempt to administer the test and must also prepare and maintain a record stating the reason(s) the test was not promptly administered to the firefighter(s).

The requirement to test for alcohol and drugs following an accident shall in no way delay necessary medical attention for injured people or prohibit a firefighter from leaving the scene of an accident to obtain assistance in responding to the accident or to obtain necessary emergency medical care. However, subject to the preceding sentence, a firefighter who is subject to post-accident testing shall remain readily available for such testing or he/she may be deemed to have refused to submit to testing.

d.) Random Testing.

The selection of firefighters for random drug testing, and effective January 1, 2003 random breath alcohol testing, shall be made by a scientifically valid random-number selection method. The selection method shall assure that each firefighter shall have an equal chance of being tested each time selections are made. Selection shall be determined by the City's testing vendor contracted to administer the drug and alcohol-testing program.

Ten percent (10%) of the bargaining unit will be tested annually on a random basis for the purpose of detecting the presence of illegal drugs or alcohol or the abuse of legal drugs. The test dates shall be spread reasonably throughout the year with no established pattern. Testing will be unannounced, as well as random. Notification and test arrangements will be made by the Fire Chief or his designee.

Once a firefighter has been notified that he/she has been selected for random testing, the firefighter shall report immediately to the collection or breath alcohol testing site. Firefighters shall be individually and discreetly notified to report to the collection or breath alcohol testing site, and

they shall be assured that they have been selected for a random test. See Appendix "A" attached for drug testing procedures.

e.) Return-to-Duty Testing.

Before any firefighter is allowed to return to duty following a verified positive drug test result, an alcohol result of 0.02 or greater or a refusal to submit to a test, that firefighter must undergo a return-to-duty test. Any return-to-duty alcohol test result must indicate an alcohol concentration of less than 0.02. Any return-to-duty drug test result must indicate a verified negative result for controlled substance abuse. In addition, before a return-to-duty alcohol or drug test is performed, the firefighter must be evaluated by a substance abuse professional (SAP) at the City's Employee Assistance Program (EAP) who shall determine what assistance, if any, the firefighter may need and shall determine whether the firefighter has subsequently followed all recommendations made by the SAP, including participation in any rehabilitation program.

Failure of a firefighter to follow counseling and/or rehabilitation program recommendations as determined by the substance abuse professional will subject the firefighter to the disciplinary provisions of this policy up to, and including, discharge. Nothing in this section shall be construed as requiring or obligating the City to allow any individual firefighter who tests positive for alcohol or drugs to return to duty. Each individual case will be evaluated on the circumstances and individual merits of the firefighter involved.

f.) Follow-up Testing.

If and when a firefighter is allowed to return to duty, such a firefighter shall be subject to unannounced follow-up testing for at least twelve (12) months but not more than sixty (60) months. The frequency and duration of the follow-up testing will be recommended by a substance abuse professional (SAP) as long as a minimum of six (6) tests are performed during the first twelve (12) months after the firefighter has returned to duty. Any subsequent verified positive alcohol or drug test involving that firefighter will result in disciplinary action up to, and including, termination of employment.

#### 2.4 Behavior that Constitutes a Refusal to Submit to a Test.

The following actions or behaviors shall constitute a refusal to submit to a required test:

- a.) refusal to take the test;
- b.) inability to provide sufficient quantities of breath or urine to be tested without a valid medical explanation;
- c.) tampering with, or attempting to adulterate, the specimen or collection procedure;
- d.) failure to report to the collection site in the time allotted; or
- e.) failure to remain readily available for post-accident testing.
- f.) failure to submit to a hair analysis drug test, if the firefighter's drug urine specimen is determined by the testing lab to be dilute.

#### 2.5 Testing Procedures.

##### a.) Drug Testing.

Drug testing is conducted by analyzing the firefighter's urine specimen. Specimens are collected in an off-site facility that must meet the requirements of Appendix "A" to assure privacy and the integrity of specimen collection. The firefighter provides a urine specimen, which is sealed and labeled by an authorized agent of the testing organization. A chain of custody document is completed and the specimen is shipped to a certified laboratory. The specimen collection procedures and chain of custody ensure that the specimen's security, proper identification, and integrity are not compromised.

This policy expressly provides that collection protocol will include split specimen techniques. Each urine specimen is sub-divided into two containers labeled as primary and split specimens. Both specimens are forwarded to a laboratory certified by the U.S. Department of Health and Human Services (DHHS). Only the primary specimen is used in the urinalysis. The split specimen remains sealed and stored unless, and until, it is required for confirmation of a positive test.

An initial screening test is performed. If the test is positive for one or more drugs, then a confirmation test is performed for each identified drug using a gas chromatography/mass spectrometry (GC/MS) analysis. GC/MS confirmation ensures that over-the-counter medications are not reported as positive results.

If the analysis of the primary specimen confirms the presence of controlled substances, then the firefighter has seventy-two (72) hours to request that the split specimen be sent to another DHHS certified laboratory for analysis. The split specimen procedures may provide the employee with an opportunity for a second opinion. **All drug test results are reviewed and interpreted by a physician, Medical Review Officer (MRO), before they are reported to the City.**

Any firefighter whose drug urine specimen is determined by the testing lab to be "dilute" shall be immediately subject to a hair analysis drug test. Failure to submit to such a test in the event of a "dilute" specimen shall be grounds for discipline up to and including termination of employment.

If the laboratory reports a positive result to the MRO, then the MRO contacts the firefighter and conducts an interview to determine if there is an alternative medical explanation for the presence of a controlled substance in the specimen. If the firefighter provides appropriate documentation and the MRO determines that there is a legitimate medical use of the prohibited drug, then the test result is reported to the City as a negative.

Urine specimens are analyzed for the following drugs:

- \* Marijuana (THC metabolite)
- \* Cocaine
- \* Amphetamines
- \* Opiates (including heroin)
- \* Phencyclidine (PCP).

b.) Alcohol Testing.

Alcohol testing is conducted using evidential breath testing (EBT) devices approved by the National Highway Traffic Safety Administration (NHTSA). A breath alcohol technician (BAT) trained in the operation of the EBT and in the alcohol testing procedure prescribed by the rules must perform the breath test. Two (2) breath tests are required to determine if a person has a prohibited alcohol concentration. Any

result from the screening test is considered negative is the alcohol concentration is less than 0.02. If the alcohol concentration is 0.02 or greater, then a confirmation test must be conducted. The firefighter and the BAT complete the alcohol testing form to ensure that results are properly recorded.

The confirmation test must be conducted using an EBT that prints the results, date, time, in sequential test numbers, and the name and serial number of the EBT to ensure the reliability of the results. BAT's shall conduct the EBT employed by drug and alcohol testing organization under contract with the City of Binghamton. Agents of the City of Binghamton or any of its departments shall not perform the breath alcohol test. Law enforcement officers will not conduct the tests as part of roadside inspections. Under certain circumstances, post-accident tests conducted by law enforcement personnel will be acceptable. See Appendix "B" attached for alcohol testing procedures.

c.) Confidentiality of Test Results.

The City of Binghamton, the drug-testing laboratory, the alcohol testing facility, and the medical review officer maintain firefighter alcohol and drug testing results and records under strict confidentiality. The results cannot be released to any other party, except a substance abuse professional, without the written consent of the firefighter. Exceptions to these confidentiality provisions are limited to a decision maker in arbitration, litigation, or other administrative proceedings arising from a positive alcohol or drug test or other violation of these rules. Statistical records and reports are maintained by the City of Binghamton and the alcohol and drug testing provider. This information is aggregate data and is used only to monitor the effectiveness of the program.

2.6 Consequences of the Use of Drugs and the Misuse of Alcohol.

a.) Consequences of Alcohol Misuse. Firefighters who engage in prohibited alcohol conduct must be immediately relieved of duty. The following circumstances constitute prohibited behaviors:

- (1) the firefighter tested has an alcohol concentration of 0.02 or greater, but less than 0.04, as determined by EBT results, when tested just before, during, or just after being on-duty;



- (2) the firefighter has used alcohol while on-duty;
- (3) the firefighter refuses to submit to a required alcohol test (as defined in Section 2.3 and 2.4 above); or
- (4) the firefighter has an alcohol concentration of 0.04 or greater, as determined by EBT results, when tested just before, during, or just after being on-duty.

A firefighter found to have violated any provision of Section 2.6 a.) (1)-(4) shall be immediately removed from duty for twenty-four (24) hours and will be charged a day of sick leave, if accrued. The incident shall be recorded.

No firefighter who has engaged in any prohibited alcohol conduct as defined in Section 2.6 a.) (2)-(4), shall be allowed to perform duty until the firefighter has been evaluated by a substance abuse professional. Before any firefighter found to have violated Section 2.6 a.) (1)-(4) returns to duty, the firefighter must undergo a return-to-duty alcohol test, with a result indicating an alcohol concentration of less than 0.02.

Failure of a firefighter to follow any counseling and/or rehabilitation program, as determined by the substance abuse professional, will be subject to the disciplinary provisions of this policy.

Any violation of Section 2.2 Prohibited Behavior will subject a firefighter to disciplinary action up to, and including, termination of employment.

- b.) Consequences of Use of Drugs. A firefighter who has a verified positive drug test result must be immediately removed from duty. The firefighter who has a verified positive drug test result shall not be allowed to return to duty until the firefighter has been evaluated by a substance abuse professional. Before a firefighter returns to duty, the firefighter must undergo and pass a return-to-duty substance test with a verified negative result.

A firefighter who has an initial verified positive drug test result and/or who is found to be in violation of Section 2.2 Prohibited Behavior will be subject to disciplinary action up to, and including, termination of employment.

Failure of a firefighter to follow any counseling and/or rehabilitation program, as determined by the substance abuse

professional, will be subject to the disciplinary provisions of this policy.

Any subsequent verified positive drug test will result in disciplinary action up to, and including, termination of employment.

- b.) Refusal to Submit to a Required Alcohol or Drug Test (as defined in Section 2.3 above).

Refusal or failure to submit by a firefighter to a required alcohol or drug test constitutes a failed test, resulting in immediate removal from duty and appropriate disciplinary action up to, and including, termination of employment.

## 2.7 Training for Supervisors.

The City of Binghamton shall ensure that all supervisors and other persons designated to determine whether reasonable suspicion exists to require a firefighter to undergo testing must receive a minimum of sixty (60) minutes of training on alcohol misuse and a minimum of sixty (60) minutes of training on controlled substance use. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances. The training shall include an overview of the program requirements, disciplinary procedures, confrontation and documentation procedures, and rehabilitation and treatment options which are available through the City of Binghamton's Employee Assistance Program (EAP).

## 2.8 Training for City Firefighters.

The City of Binghamton shall ensure that all firefighters shall have the opportunity to be trained for a minimum of sixty (60) minutes on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, as well as the manifestations and behavioral signs that may indicate prohibited use, as per the training materials (video and written) provided by the City's EAP.

## 2.9 Supervisory Responsibilities.

It is the policy of the City of Binghamton that:

- a.) supervisors are responsible for determining through direct observation whether a firefighter is capable of performing his

or her assigned duties. Determinations shall be based on specific, contemporaneous, articulate, reliable observations concerning the appearance, behavior, speech, or body odor of the employee;

- b.) firefighters who are suspected of being unfit for duty as a result of alcohol or drug use shall be required to undergo reasonable suspicion drug and/or alcohol testing in accordance this policy. Supervisors must immediately bring their observations to the attention of their superiors in order that arrangements for testing can be implemented as soon as practicable;
- c.) incidents and behavior described above must be witnessed and documented immediately. The supervisor's manager should be consulted and advised of the incident. A firefighter who is impaired should not be allowed to drive home from the work place or the test site. The supervisor should arrange to send the unfit firefighter home with a member of the employee's family or friend of the firefighter or in a taxi at the firefighter's expense. If all other alternatives are exhausted, a supervisor may allow a firefighter who is unfit for duty to then be driven home in a City vehicle;
- d.) the fact that an unfit firefighter engaged in prohibited behavior as defined in Section 2.2 above and was not allowed to remain at work or was tested is not considered a disciplinary suspension. After the employee is removed from the work place and tested, supervisors and managers should discuss the specifics of the situation with their department head to review appropriate disciplinary action. Each situation will be evaluated on a case-by-case basis; and
- e.) when a firefighter displays dangerous, aggressive, or abusive behavior which clearly constitutes a danger to that firefighter or others and the firefighter resists voluntarily leaving the workplace, the supervisor may immediately suspend the firefighter and order the firefighter to leave the premises. The supervisor must take immediate steps to notify the department head of the situation including having the department head paged or called at home.
- f.) In cases where the firefighter does not comply with disciplinary suspension and the firefighter continues to display aggressive and/or abusive behavior that constitutes a danger in the workplace, the supervisor may have to contact local law enforcement authorities to remove the employee from the workplace. Law enforcement intervention should only be

taken if it is believed an immediate danger to persons or property exists and the other measures described above were unsuccessful in controlling the situation.

#### 2.10 Management Responsibilities.

It is the policy of the City of Binghamton that:

- a.) a drug and alcohol free workplace shall be maintained through the efforts and personal example of management;
- b.) subordinate managers and supervisors who fail to perform their duties and responsibilities as outlined in this policy will be subject to disciplinary action up to, and including, termination of employment;
- c.) managers and supervisors are encouraged to discuss with firefighters any behavior or job performance factors that may indicate the use of drugs, alcohol, or other violations of this policy and to suggest, when appropriate, that a firefighter seek assistance through the City's EAP;
- d.) effective January 1, 2000, managers shall direct all firefighters under their direction and subject to this policy to comply with the provisions of this policy for pre-employment, reasonable suspicion, post-accident, return-to-duty, and follow-up testing;
- e.) Firefighters who make reasonable suspicion determinations must receive training on the physical, behavioral, and performance indicators of probable drug use and alcohol misuse. Such training shall be conducted by staff from the City's EAP.

APPENDIX "A"  
UNITED OCCUPATIONAL MEDICINE

PROCEDURE FOR DOT URINE DRUG COLLECTION

1. Upon arrival at the collection site the collector shall request the donor to present photo identification (ID). If no photo ID is available, a Company Representative must verify ID.
2. The donor will be asked to remove any unnecessary outer garments (e.g., coat, jacket) that might conceal items or substances that could be used to tamper with or adulterate his/her urine specimen. Also, all personal belongings (e.g., purse, briefcase) must remain with outer garments.
3. Each donor will be required to sign a UHS Hospitals "Consent for Urine Drug Testing."
4. The donor will be instructed to wash and dry his/her hands prior to urination.
5. After washing hands, the donor will remain in the presence of the collector and not have access to water fountains, faucets or cleaning agents.
6. At the collection site, toilet bluing agents will be placed in the toilet water, so the reservoir of water is always blue. The water supply to the sink will be shut off prior to the collection.
7. The donor may provide specimen in the privacy of the bathroom.
8. Upon receipt of the specimen, the collector will determine the contents to be at least 45 milliliters to produce a split specimen.
9. Within four (4) minutes after collection, the collector will measure the temperature of the specimen and conduct an inspection to determine the specimen's color and signs of contaminants. Any unusual findings resulting from inspection must be included on the chain of custody form.

If the temperature of the specimen is outside the range of 32.5 - 37.5 C/90.5 - 99.5F, the specimen may be re-collected under direct observation and both specimens sent to the laboratory. (A donor may volunteer to have an oral temperature taken to provide evidence of fever or abnormally low body temperature). Under direct observation, the individual will have the right to request an observer of the same gender.
10. If a collection bottle was used, the collector, in the presence of the donor, will pour the urine into two specimen bottles. Thirty (30) milliliters shall be poured into one bottle, to be used as the primary specimen. At least 15 milliliters will be poured into a second bottle to be used as the split specimen.
11. Both bottles will be shipped in a single shipping container, together with copies 1,2, and the split specimen copy of the chain of custody form, to SmithKline Beecham Clinical Laboratory.
12. If the individual is unable to provide 45 milliliters of urine, the collector will instruct the donor to drink not more than 40 ounces of fluids and, after a period of up to three hours, again attempt to provide a complete sample in a fresh container. The original insufficient specimen will be discarded. If the donor is still unable to provide an adequate specimen, the testing will be discontinued and the employer notified.
13. The donor and the collector will keep the specimen in view at all times prior to sealing and labeling. If for any reason the specimen is transferred to a second container, the collector shall request the donor to observe the transfer of the specimen and placement of the tamper proof seal over the bottle cap and down the sides of the bottle. The donor must initial the tamper proof seal.
14. The specimen(s) will be identified by bar code and social security number.
15. The collector will enter the identification information on the chain of custody form. Both the collector and the donor will sign the form with the identifying information. The specimen will be placed in locked box for storage until courier transport takes place. The collector copy of the chain of custody form will remain at the collection site.

No further testing is authorized. The BAT will transmit the result of less than 0.02 to the employer in a confidential manner, and the employer will receive and store the information so as to ensure that confidentiality is maintained. Copy two of the form goes to the employee.

NOTE: If the individual does not sign the certification in STEP 4 of the form or does not initial the log book entry for a test, it will not be considered a refusal to be tested. However, the BAT will note the individual's failure to sign or initial in the "Remarks" section of the form.

NOTE: If a test result printed by the EBT does not match the displayed result, the BAT will note the disparity in the "Remarks" section of the form. Both the individual and the BAT will initial or sign the notation. The test is considered invalid and the employer and the individual will be so notified.

- If the result is 0.02 or greater, a confirmation test must be performed. If the confirmation test will be performed by a different BAT, the BAT who conducted the screening test will complete and sign the form and log book entry. The BAT is to give the employee Copy 2 of the form.

#### CONFIRMATION TESTING PROCEDURE

If a different BAT is conducting the confirmation test, the new BAT will require positive identification of the individual and explain the test procedure. For all confirmation tests, a new Breath Alcohol Testing Form will be initiated and steps 1 and 2 will be completed with the employee. In addition, the following instructions must be followed:

1. The BAT will instruct the individual not to eat, drink, put any object or substance in his or her mouth, and, to the extent possible, not belch during a waiting period before the confirmation test. This time period begins with the completion of the screening test, and shall not be less than 15 minutes. The BAT will explain to the individual the reason for this requirement (i.e., to prevent any accumulation of mouth alcohol leading to an artificially high reading) and the fact that it is for the individual's benefit. The BAT will also explain that the test will be conducted at the end of the waiting period, even if the individual has disregarded the instruction. If the BAT becomes aware that the individual has not complied with this instruction, the BAT shall so note in the "Remarks" section of the form.
2. The confirmation test shall be conducted within 20 minutes of the completion of the screening test.
3. A new mouthpiece will be opened and used for the confirmation test.
4. Before the confirmation test is administered for each individual, the BAT will ensure that the EBT registers 0.00 on an air blank. If the reading is greater than 0.00, the BAT shall conduct one more air blank. If the reading is greater than 0.00, testing shall not proceed using that instrument. However, testing may proceed on another instrument.

NOTE: Any EBT taken out of service because of failure to perform an air blank accurately shall not be used for testing until a check of external calibration is conducted and the EBT is found to be within tolerance limits.

5. In the event that the screening and confirmation test results are not identical, the confirmation test result is deemed to be the final result upon which any action under operating administration rules shall be based.
6. If the EBT provides a printed result, but does not print the results directly onto the form, the BAT will show the individual the result displayed on the EBT. The BAT will then affix the test result printout to the breath alcohol test form in the designated space, using a method that will provide clear evidence of removal (e.g., tamper-evident tape). If the EBT prints the test results directly onto the form, the BAT will show the individual the result displayed on the EBT.
7. Following the completion of the test, the BAT will date the form and sign the certification in STEP 3 of the form. The individual shall sign the certification and fill in the date in STEP 4 of the form.

NOTE: If the individual does not sign the certification in STEP 4 of the form or does not initial the log book entry for a test, it will not be considered a refusal to be tested. However, the BAT will note the individual's failure to sign or initial in the "Remarks" section of the form.

NOTE: If a test result printed by the EBT does not match the displayed result, the BAT will note the disparity in the "Remarks" section of the form. Both the individual and the BAT will initial or sign the notation. The test is considered invalid and the employer and individual shall be so notified.

8. The BAT will conduct an air blank. If the reading is greater than 0.00, the test is invalid.
9. The BAT will transmit all results to the employer in a confidential manner. Such transmission may be in writing, in person, or by telephone or electronic means, but the BAT will ensure immediate transmission to the employer of results that require the employer to prevent the individual from performing a safety-sensitive function.
  - If the initial transmission is not in writing (e.g., by telephone), the employer shall establish a mechanism to verify the identity of the BAT providing the information.
  - If the initial transmission is not in writing, the BAT will follow the initial transmission by providing to the employer the employer's copy of the breath alcohol testing form. The employer shall store the information so as to ensure that confidentiality is maintained.

APPENDIX "B"

UNITED OCCUPATIONAL MEDICINE  
PROCEDURES FOR BREATH ALCOHOL TESTING

PREPARATION FOR TESTING

1. Alcohol testing will be conducted in a location that affords visual and aural privacy to the individual being tested. Unauthorized persons will not be permitted access to the testing location when a test is in progress.
2. The individual is required to show photo identification or have a company representative verify identification. The Breath Alcohol Technician (BAT) will then explain the testing procedure to the individual.
3. The BAT will supervise only one individual's use of the Evidential Breath Tester (EBT) at a time. The BAT will not leave the testing site while the test is in progress.

SCREENING TEST PROCEDURE

1. The individual will be requested to complete Steps 1 and 2 of the Breath Alcohol Testing Form. A refusal by an individual to sign the certification in Step 2 of the form shall be regarded as a refusal to take the test.
2. An individually-sealed mouthpiece will be opened in view of the individual and attached to the EBT.
3. The BAT will instruct the individual to blow forcefully into the mouthpiece for at least six (6) seconds or until the EBT indicates that an adequate amount of breath has been obtained.
4. Depending on the type of EBT used, the BAT will do the following:
  - If the EBT does not print the results, the BAT will show the employee the result displayed on the EBT.

The BAT shall record the display result, test number, testing device, serial number of the testing device, time and quantified result obtained in STEP 3.

The BAT will also record the test number, date of the test, name of the BAT, location and quantified test result in the log book. The employee shall also initial the log book entry.

- If the EBT prints results but not directly onto the form, the BAT will show the employee the result displayed on the EBT. The BAT will affix Page 2 the test result printout to the Breath Alcohol Test Form in the designated space.
  - If the EBT prints the test results onto the form, the BAT will show the employee the result displayed on the EBT.
5. Depending on whether the result is less than 0.02 or 0.02 or greater, the following will be done:
    - If the result is less than 0.02, the BAT will date the form and sign the certification in STEP 3 of the form. The employee will sign the certification and fill in the date in STEP 4 of the form.